

1 H.610

2 Representatives Grad of Moretown and LaLonde of South Burlington move
3 that the bill be amended by striking out all after the enacting clause and
4 inserting in lieu thereof the following:

5 * * * Firearms Transfer Background Checks * * *

6 Sec. 1. 13 V.S.A. § 4019 is amended to read:

7 § 4019. FIREARMS TRANSFERS; BACKGROUND CHECKS

8 (a) As used in this section:

9 * * *

10 (4) “Licensed dealer” means a person issued a license as a dealer in
11 firearms pursuant to 18 U.S.C. § 923(a).

12 (5) “Proposed transferee” means an unlicensed person to whom a
13 proposed transferor intends to transfer a firearm.

14 (6) “Proposed transferor” means an unlicensed person who intends to
15 transfer a firearm to another unlicensed person.

16 (7) “Transfer” means to transfer ownership of a firearm by means of
17 sale, trade, or gift.

18 (8) “Unlicensed person” means a person who has not been issued a
19 license as a dealer, importer, or manufacturer in firearms pursuant to 18 U.S.C.
20 § 923(a).

1 (b)(1) Except as provided in subsection (e) of this section, an unlicensed
2 person shall not transfer a firearm to another unlicensed person unless:

3 (A) the proposed transferor and the proposed transferee physically
4 appear together with the firearm before a licensed dealer and request that the
5 licensed dealer facilitate the transfer; and

6 (B) the licensed dealer agrees to facilitate the transfer.

7 (2) A person shall not, in connection with the transfer or attempted
8 transfer of a firearm pursuant to this section, knowingly make a false statement
9 or exhibit a false identification intended to deceive a licensed dealer with
10 respect to any fact material to the transfer.

11 * * *

12 (d) A person shall not transfer a firearm to another person if:

13 (1) the transfer requires a background check under this section or under
14 Federal law; and

15 (2) the licensed dealer facilitating the transfer has not been provided
16 with a unique identification number for the transfer by the National Instant
17 Criminal Background Check System, provided that if the identification number
18 has not been provided within 90 30 days then the transfer may proceed.

19 ~~(d)~~(e)(1) An unlicensed person who transfers a firearm to another
20 unlicensed person in violation of subdivision (b)(1) of this section shall be
21 imprisoned not more than one year or fined not more than \$500.00, or both.

1 (a) A person who hinders an executive, judicial, law enforcement, civil, or
2 military officer acting under the authority of this State or any subdivision
3 thereof, or who removes a weapon from the person of a law enforcement
4 officer, or who deprives a law enforcement officer of the use of a weapon,
5 shall be imprisoned not more than three years or fined not more than \$500.00,
6 or both. For purposes of this section, law enforcement officer is defined under
7 section 3019 of this title.

8 (b) A person present at a location during the lawful search for or seizure or
9 removal of firearm pursuant to an order issued under 15 V.S.A. § 1103 or 1104
10 who refuses to obey instructions from a law enforcement officer to ensure the
11 safe removal of firearms or to protect the safety of the officer or other persons
12 present, shall be imprisoned not more than two years or fined not more than
13 \$500.00, or both.

14 (c) As used in this section:

15 (1) ~~“weapon”~~ “Weapon” means any device, instrument, material, or
16 substance, whether animate or inanimate, excluding a firearm as defined in
17 section 3019 of this title, which, in the manner it is used or is intended to be
18 used, is known to be capable of producing death, serious bodily injury, or
19 temporary disability.

20 (2) “Ensure the safe removal of firearms or to protect the safety of the
21 officer or other persons present” includes instructions requiring a person to

1 temporarily vacate a location until a law enforcement officer determines that
2 firearms have been removed from the premises.

3 Sec. 4. 15 V.S.A. § 1101 is amended to read:

4 § 1101. DEFINITIONS

5 The following words as used in this chapter shall have the following
6 meanings:

7 * * *

8 (7) “Relinquishment of a firearm” means to give up, pursuant to the
9 instructions of a law enforcement officer, possession or control of a firearm to
10 a cooperating law enforcement agency, an approved federally licensed firearms
11 dealer, or a third party approved by the court pursuant to 20 V.S.A.
12 § 2307(b)(2).

13 (8) “Instructions of a law enforcement officer” includes instructions
14 related to:

15 (A) the location of firearms, production or location of keys, and
16 combinations to locks for firearms, safes, and doors;

17 (B) the time, place, manner and conditions of relinquishment; and

18 (C) any other information that will assist the officer in the expedited
19 access, retrieval, or delivery of firearms subject to relinquishment.

20 Sec. 2. 15 V.S.A. § 1103 is amended to read:

21 § 1103. REQUESTS FOR RELIEF

1 (a) Any family or household member may seek relief from abuse by
2 another family or household member on behalf of himself or herself or his or
3 her children by filing a complaint under this chapter. A minor 16 years of age
4 or older, or a minor of any age who is in a dating relationship as defined in
5 subdivision 1101(2) of this chapter, may file a complaint under this chapter
6 seeking relief on his or her own behalf. The plaintiff shall submit an affidavit
7 in support of the order.

8 * * *

9 (c)(1) The court shall make such orders as it deems necessary to protect the
10 plaintiff or the children, or both, if the court finds that the defendant has
11 abused the plaintiff, and:

12 (A) there is a danger of further abuse; or

13 (B) the defendant is currently incarcerated and has been convicted of
14 one of the following: murder, attempted murder, kidnapping, domestic assault,
15 aggravated domestic assault, sexual assault, aggravated sexual assault,
16 stalking, aggravated stalking, lewd or lascivious conduct with a child, use of a
17 child in a sexual performance, or consenting to a sexual performance.

18 * * *

19 (3)(A) The court order shall:

20 (i) if there is evidence that the defendant is in possession of or has

21 access to possesses, owns, or controls firearms, require the immediate

1 relinquishment, until the expiration of the order, of all firearms that are in the
2 defendant’s possession, ownership, or control or that another person possesses,
3 owns, or controls on behalf of the defendant, unless the court makes a written
4 finding by clear and convincing evidence relinquishment is not required to
5 protect the safety of the victim or the public;

6 (ii) if the order includes a requirement to vacate, prohibit the
7 defendant from residing at a residence where firearms are present can be
8 accessed by the defendant, unless the court makes a written finding by clear
9 and convincing evidence relinquishment is not required to protect the safety of
10 the victim or the public;

11 (iii) inform the defendant that he or she is prohibited from
12 possessing firearms until the expiration of the order; and

13 (iv) if the order requires relinquishment of firearms:

14 (I) include all available information regarding the type, number,
15 and location of firearms subject to the order;

16 (II) require the defendant to relinquish the firearms pursuant to
17 the instructions of a law enforcement officer; and

18 (III) require the defendant to provide the law enforcement
19 officer with:

20 (aa) the location of firearms, production or location of keys,
21 and combinations to locks for firearms, safes, and doors; and

1 (bb) any other information that will assist the officer in the
2 expedited access, retrieval, or delivery of firearms subject to relinquishment.

3 * * *

4 (h)(1) Form complaints and form orders shall be provided by the Court
5 Administrator and shall be maintained by the clerks of the courts.

6 (2) The Complaint for Relief from Abuse and the Affidavit in Support
7 of Relief From Abuse Complaint shall include specific provisions collecting
8 information about the defendant’s firearms, including questions that permit the
9 plaintiff to state with particularity the type and location of any firearm in the
10 defendant’s possession, ownership, or control or that another person possesses,
11 owns, or controls on behalf of the defendant.

12 * * *

13 Sec 3. 15 V.S.A. § 1104 is amended to read:

14 § 1104. EMERGENCY RELIEF

15 (a) In accordance with the Vermont Rules of Civil Procedure, temporary
16 orders under this chapter may be issued ex parte, without notice to the
17 defendant, upon motion and findings by the court that the defendant has abused
18 the plaintiff or the plaintiff’s children, or both. The plaintiff shall submit an
19 affidavit in support of the order. A minor 16 years of age or older, or a minor
20 of any age who is in a dating relationship as defined in subdivision 1101(2) of

1 this chapter, may seek relief on his or her own behalf. Relief under this section
2 shall be limited as follows:

3 * * *

4 (4)(A) An order issued under this section shall:

5 (i) if the plaintiff's complaint or affidavit indicates includes
6 information that the defendant is in possession of or has access to possesses,
7 owns, or controls firearms, require the immediate relinquishment, until the
8 expiration of the order, of all firearms that are in the defendant's possession,
9 ownership, or control or that another person possesses, owns, or controls on
10 behalf of the defendant, unless the court makes a written finding by clear and
11 convincing evidence relinquishment is not required to protect the safety of the
12 victim or the public;

13 (ii) if the order includes a requirement to vacate, prohibit the
14 defendant from residing at a residence where firearms are present can be
15 accessed by the defendant, unless the court makes a written finding by clear
16 and convincing evidence relinquishment is not required to protect the safety of
17 the victim or the public;

18 (iii) inform the defendant that he or she is prohibited from
19 possessing firearms until the expiration of the order;

20 (iv) if the order requires relinquishment of firearms:

1 (b) A person who violates this section shall be imprisoned not more than
2 two years or fined not more than \$1,000.00, or both.

3 Sec. 5. 15 V.S.A. § 1105 is amended to read:

4 § 1105. SERVICE; WARRANTS

5 (a) A complaint or ex parte temporary order or final order issued under this
6 chapter shall be served in accordance with the Vermont Rules of Civil
7 Procedure and may be served by any law enforcement officer. A court that
8 issues an order under this chapter during court hours shall promptly transmit
9 the order electronically or by other means to a law enforcement agency for
10 service.

11 (b) (1) A defendant who attends a hearing held under section 1103 or 1104
12 of this title at which a temporary or final order under this chapter is issued and
13 who receives notice from the court on the record that the order has been issued
14 shall be deemed to have been served. A defendant notified by the court on the
15 record shall be required to adhere immediately to the provisions of the order.
16 However, even when the court has previously notified the defendant of the
17 order, the court shall transmit the order for additional personal service by a law
18 enforcement agency or serve the order by first class mail to the defendant's last
19 known address.

20 (2) A defendant who has been served with a temporary order issued
21 under section 1103 of this title may be served with all subsequent orders in the

1 ~~ease by first class mail to the defendant's last known address. The defendant~~
2 ~~shall inform the court of any changes to the defendant's address. The~~
3 ~~subsequent order, including any changes made to the temporary order, shall be~~
4 ~~effective when the subsequent order is issued.~~

5 (2) An ex parte temporary order issued under this chapter shall remain in
6 effect until it is either dismissed by the court or the petition is denied at the
7 final hearing. If a final order is issued, the temporary order shall remain in
8 effect until personal service of the final order.

9 (c) Abuse orders shall be served by the law enforcement agency at the
10 earliest possible time and shall take precedence over other summonses and
11 orders. Orders shall be served in a manner calculated to ensure the safety of the
12 plaintiff. Methods of service that include advance notification to the defendant
13 shall not be used. The person making service shall file a return of service with
14 the court stating the date, time, and place at which the order was delivered
15 personally to the defendant.

16 (d) If service of a notice of hearing issued under section 1103 or 1104 of
17 this title cannot be made before the scheduled hearing, the court shall continue
18 the hearing and extend the terms of the order upon request of the plaintiff for
19 such additional time as it deems necessary to achieve service on the defendant.

20 (e)(1)(A) A complaint or ex parte temporary order or final order requiring
21 relinquishment of firearms that is served pursuant to this section shall be

1 accompanied by a return of service form on which the law enforcement officer
2 shall indicate with specificity:

3 (i) whether and how many firearms were relinquished by the
4 defendant at the time of service; and

5 (ii) whether a warrant is being sought; and

6 (ii) if obtainable with reasonable effort, the defendant's mailing
7 address for service of future orders.

8 (ii) whether a law enforcement officer has attempted to contact the
9 plaintiff after service of the order and prior to the return of service being filed
10 with the court.

11 (B) The court shall provide a copy of the return of service to the
12 plaintiff.

13 (C) After the law enforcement officer has made the indications
14 required by subdivision (1)(A) of this subsection, the return of service and the
15 affidavit shall be filed with the court at the earliest possible time and shall take
16 precedence over other summonses and orders. Failure to properly make or
17 complete the indications required by subdivision (1)(A) of this subsection,
18 shall not affect the validity of the service.

19 (2) If the defendant does not relinquish firearms upon service of the
20 order in a timely manner, and the law enforcement officer has probable cause
21 to believe the defendant possesses, owns, or controls firearms, the officer shall,

1 ~~unless a judicially recognized exception to the warrant requirement applies,~~
2 ~~submit the return of service form to the court along with file with the court an~~
3 ~~affidavit and an application for requesting that a warrant for seizure of the~~
4 ~~firearms be issued pursuant to Vermont Rule of Criminal Procedure 41.~~

5 ~~(3) If the defendant does not relinquish firearms upon service of the~~
6 ~~order, and the law enforcement officer has a reasonable suspicion that the~~
7 ~~defendant possesses, owns, or controls firearms, the officer shall investigate~~
8 ~~the matter within 48 hours, or as soon as practicable. If the officer determines~~
9 ~~that there is probable cause to believe the defendant possesses, owns, or~~
10 ~~controls firearms, the officer shall submit the return of service form pursuant to~~
11 ~~subdivision (2) of this subsection. If the officer does not determine that~~
12 ~~probable cause exists, the return of service shall include a statement describing~~
13 ~~the efforts that were made to establish probable cause during the investigation.~~

14 (2) The court ~~shall~~ may issue a warrant under this subsection for seizure
15 of firearms from the defendant ~~if the court finds,~~ in response to an application
16 for a warrant filed by a law enforcement officer pursuant to Rule 41 of the
17 Vermont Rules of Criminal Procedure, ~~that there is probable cause to believe:~~

18 (i) ~~there are firearms in the defendant's possession, ownership, or~~
19 ~~control while the an order with a firearms relinquishment condition is in effect;~~
20 ~~and~~

1 (ii) a search for and seizure of the firearms is necessary to protect
2 the life, health, or well-being of a victim on whose behalf the relief is sought.

3 (B) This subdivision shall not be construed to prevent the court from
4 issuing a warrant for search and seizure related to a different abuse prevention
5 order violation.

6 (3) A law enforcement officer acting on behalf of the law enforcement
7 agency that served the order shall attempt to contact the plaintiff after firearms
8 are relinquished by or seized from the defendant in connection with an order
9 served pursuant to this section.

10 (3)(A) Law enforcement agencies and law enforcement officers shall be
11 immune from civil or criminal liability for any act undertaken or omission
12 made in good faith reliance on the provisions of this section chapter, including:

13 (i) failing to search for, learn of, or locate, or seize a firearm while
14 executing a warrant issued pursuant to this subsection, or for:

15 (ii) returning a seized or relinquished weapon to its owner if the
16 owner is not prohibited from owning or possessing firearms under state or
17 Federal law;

18 (iii) causing damage to any property, including a safe damaged
19 while accessing firearms;

20 (iv) enforcing a court order or search warrant; or

1 (v) conducting a search or seizure pursuant to a judicially
2 recognized exception to the warrant requirement.

3 (B) Nothing in this chapter shall be construed to create a legal duty
4 for a law enforcement officer or agency to a plaintiff or any other person, and
5 no action may be filed against a law enforcement agency or officer based upon
6 a claim for which there is no liability under this subdivision (3).

7 (4)(A) Non-evidentiary firearms relinquished or seized pursuant to this
8 subsection or subsections 1103(c) or 1104(a) of this title shall be relinquished,
9 transported, and stored pursuant to 20 V.S.A. § 2307.

10 (B) A law enforcement agency shall be immune from civil or
11 criminal liability for any damage or deterioration of firearms relinquished or
12 seized pursuant to this subsection or subsections 1103(c) or 1104(a) of this
13 title. This subdivision (B) shall not apply if the damage or deterioration
14 occurred as a result of recklessness, gross negligence, or intentional
15 misconduct by the law enforcement agency.

16 (f)(1) On or before January 1 of each year, any law enforcement agency
17 that has within the previous year served a temporary or final order pursuant to
18 this chapter shall report to the Department of Public Safety:

19 (A) the total number of temporary orders the agency served during
20 the previous year;

1 ~~(B) the total number of final orders the agency served during the~~
2 ~~previous year; and~~

3 ~~(C) the number of nonevidentiary firearms the agency collected~~
4 ~~during the previous year while serving a temporary or final order pursuant to~~
5 ~~this chapter.~~

6 ~~(2) On or before January 31 of each year, the Department of Public~~
7 ~~Safety shall report the data it has received pursuant to this subsection to the~~
8 ~~House and Senate Committees on Judiciary.~~

9 * * *

10 * * * Extreme Risk Protection Orders * * *

11 Sec. 6. 13 V.S.A. § 4051 is amended to read:

12 § 4051. DEFINITIONS

13 As used in this subchapter:

14 * * *

15 (7) “Household member” has the same meaning as in 15 V.S.A. § 1101.

16 Sec. 7. 13 V.S.A. § 4052 is amended to read:

17 § 4052. JURISDICTION AND VENUE; FILING

18 * * *

19 (c) Proceedings under this chapter shall be commenced in the county where
20 the law enforcement agency is located, the county where the family or

1 household member or the respondent resides, or the county where the events
2 giving rise to the petition occur.

3 (d) A petition or motion filed by a family or household member pursuant to
4 subsection 4053(a) or 4054(a) of this title shall be filed during the court's
5 regular business hours only.

6 Sec. 8. 13 V.S.A. § 4053 is amended to read:

7 § 4053. PETITION FOR EXTREME RISK PROTECTION ORDER

8 (a) A State's Attorney ~~or~~, the Office of the Attorney General, or a family or
9 household member may file a petition requesting that the court issue an
10 extreme risk protection order prohibiting a person from purchasing, possessing,
11 or receiving a dangerous weapon or having a dangerous weapon within the
12 person's custody or control. The petitioner shall submit an affidavit in support
13 of the petition.

14 * * *

15 Sec. 9. 13 V.S.A. § 4054 is amended to read:

16 § 4054. EMERGENCY RELIEF; TEMPORARY EX PARTE ORDER

17 (a)(1) **(A)** A State's Attorney ~~or~~, the Office of the Attorney General, or a
18 family or household member may file a motion requesting that the court issue
19 an extreme risk protection order ex parte, without notice to the respondent. A
20 law enforcement officer may notify the court that an ex parte extreme risk

1 protection order is being requested pursuant to this section, but the court shall
2 not issue the order until after the motion is submitted.

3 **(B) A motion filed under this section by a family or household**
4 **member may only be based on an allegation that the petitioner poses an**
5 **imminent and extreme risk of causing harm to another person, and shall not be**
6 **based on an allegation that the respondent poses an imminent and extreme risk**
7 **of causing harm to himself or herself.**

8 * * *

9 Sec. 10. 13 V.S.A. § 4055 is amended to read:

10 § 4055. TERMINATION AND RENEWAL MOTIONS

11 * * *

12 (b)(1) A State's Attorney ~~or~~ the Office of the Attorney General, or a
13 family or household member may file a motion requesting that the court renew
14 an extreme risk protection order issued under this section or section 4053 of
15 this title for an additional period of up to six months. The motion shall be
16 accompanied by an affidavit and shall be filed not more than 30 days and not
17 less than 14 days before the expiration date of the order. The motion and
18 affidavit shall comply with the requirements of subsection 4053(c) of this title,
19 and the moving party shall have the burden of proof by clear and convincing
20 evidence.

21 * * *

1 Sec. 11. 13 V.S.A. § 4057 is amended to read:

2 § 4057. PROCEDURE

3 (a) Except as otherwise specified, proceedings commenced under this
4 subchapter shall be in accordance with the Vermont Rules for Family
5 Proceedings and shall be in addition to any other available civil or criminal
6 remedies.

7 * * *

8 (d)(1) For purposes of a petition filed pursuant to this subchapter, a health
9 care provider may notify a law enforcement officer when the provider believes
10 in good faith that disclosure of the information is necessary to prevent or lessen
11 a serious and imminent threat to the health or safety of a person or the public.

12 (2) As used in this subsection:

13 (A) “Health care provider” has the same meaning as in 18 V.S.A.
14 § 9432.

15 (B) “Necessary to prevent or lessen a serious and imminent threat to
16 the health or safety of a person or the public” includes circumstances when the
17 health care provider reasonably believes that the patient poses an extreme risk
18 of causing harm to himself or herself or another person by purchasing,
19 possessing, or receiving a dangerous weapon or by having a dangerous weapon
20 within his or her custody or control.

21 * * * Conditions of Release Prior to Trial * * *

1 Sec. 12. 13 V.S.A. § 7554 is amended to read:

2 § 7554. RELEASE PRIOR TO TRIAL

3 (a) Release; conditions of release. Any person charged with an offense,
4 other than a person held without bail under section 7553 or 7553a of this title,
5 shall at his or her appearance before a judicial officer be ordered released
6 pending trial in accordance with this section.

7 * * *

8 (2) If the judicial officer determines that conditions of release imposed
9 to ensure appearance will not reasonably protect the public, the judicial officer
10 may impose in addition the least restrictive of the following conditions or the
11 least restrictive combination of the following conditions that will reasonably
12 ensure protection of the public:

13 * * *

14 (G) Require a defendant not to possess firearms or other weapons.

15 * * *

16 * * * Reports * * *

17 **Sec. 13. DEPARTMENT OF PUBLIC SAFETY REPORT**

18 On or before December 15, 2020 2021, the Department of Public Safety
19 shall report to inform the House and Senate Committees on Judiciary on the
20 progress of its modernization reform program, including data collection and

1 reporting, and the steps it has taken to provide assistance to local law
2 enforcement agencies in seizing and storing relinquished firearms.

3 **Sec. 14. ATTORNEY GENERAL REPORT**

4 On or before December 15, 2020 2021, the Attorney General's Office shall
5 report to the House and Senate Committees on Judiciary on the progress of the
6 Firearms Technical Assistance Project in implementing this Act, including any
7 remaining barriers to implementation implementing this Act.

8 * * * Effective Date * * *

9 **Sec. 15. EFFECTIVE DATE**

10 This act shall take effect on passage July 1, 2020.

11